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on behalf of himself and all others similarly
situated

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Attorneys for Defendant
MCKESSON MEDICAL-SURGICAL INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN HARRIS, individually and on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

MCKESSON MEDICAL-SURGICAL
INC., a Virginia Corporation; and DOES
1-50, inclusive,

Defendant.

Case No. 2:20-CV-01321-JAM-AC

**JOINT STIPULATION TO MODIFY
THE INITIAL SCHEDULING ORDER;
ORDER**

Trial Date: June 6, 2022
Complaint Filed: April 3, 2020

1 Plaintiff KEVIN HARRIS (“Plaintiff”) and Defendant MCKESSON MEDICAL-
2 SURGICAL INC. (“Defendant”) (collectively, the “Parties”), by and through their respective counsel
3 of record, hereby agree and respectfully stipulate as follows:

4 **WHEREAS**, Plaintiff filed his Complaint on April 3, 2020 in Placer County Superior
5 Court, and Defendant timely removed this matter to this Court on July 1, 2020.

6 **WHEREAS**, on August 24, 2020, the Parties filed their Joint Report of their Rule 26(f)
7 Conference and Proposed Discovery Plan (Dkt. 3), which included proposed deadlines for Plaintiff to
8 file a motion for class certification, and for Defendant to oppose such a motion;

9 **WHEREAS**, on August 25, 2020, this Court issued its Initial Scheduling Order (Dkt.
10 4), which set forth the following deadlines:

- 11 • Expert Witness Disclosures by November 19, 2021
- 12 • Rebuttal Expert Disclosures by December 3, 2021
- 13 • Discovery to be completed by January 14, 2022
- 14 • Dispositive Motions filed by February 15, 2022
- 15 • Dispositive Motion hearing on March 15, 2022 at 1:30pm
- 16 • Final Pre-Trial Conference on April 29, 2022 at 10:00am
- 17 • Jury Trial on June 6, 2022

18 However, the Court’s Initial Scheduling Order did not include any deadlines for Class
19 Certification/De-Certification Motions, nor did it include deadlines for expert disclosures relating to
20 Class Certification as requested in the Parties’ Joint Report (Dkt. 3).

21 **WHEREAS**, on August 31, 2020, Defendant filed its Objections to the Initial
22 Scheduling Order (Dkt. 5), requesting that this Court set forth deadlines for Class Certification/De-
23 Certification as requested in the Parties’ Joint Report.

24 **WHEREAS**, Defendant’s Objections to the Initial Scheduling Order remained
25 pending, but the Parties’ thereafter propounded and responded to written discovery requests, and met
26 and conferred to resolve alleged deficiencies in the discovery responses, including serving amended
27 discovery responses, as well as engaging in efforts to resolve a discovery dispute relating to the scope
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1 of the alleged putative Class.

2 **WHEREAS**, the Parties could not resolve their discovery dispute relating to the scope
3 of the putative Class, and held an Informal Discovery Conference (“IDC”) before Magistrate Judge
4 Claire on April 8, 2021. Magistrate Judge Claire determined that Plaintiff was entitled to conduct
5 discovery based on a broader scope of the Class.

6 **WHEREAS**, during the IDC, Defendant’s counsel raised to Magistrate Judge Claire
7 the fact that Defendant’s Objections to the Initial Scheduling Order remained pending, to which
8 Magistrate Judge Claire advised the Parties to file a stipulation to Modify the Scheduling Order to
9 incorporate the deadlines set forth in the Parties’ initial Joint Report.

10 **WHEREAS**, since the IDC, the Parties have engaged in further discovery and
11 depositions related to a broader scope of the putative Class, and have since met and conferred and
12 agree that Plaintiff still intends to move for Class Certification, and Defendant intends to oppose and/or
13 move for Class De-Certification, and that both Parties will need more time to conduct further discovery
14 and/or prepare a dispositive motion after the Court rules on Class Certification.

15 **WHEREAS**, good cause exists to modify the Court’s scheduling Order as follows:

16 The district court is given broad discretion in supervising the pretrial phase of
17 litigation...” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (citation and
18 internal quotation marks omitted). “A schedule may be modified only for good cause and with the
19 judge’s consent.” Fed. R. Civ. P. 16(b)(4); see e.g. *Spiller v. Ella Smithers Geriatric Ctr.*, 919 F.2d
20 339, 343 (5th Cir. 1990) (court impliedly granted motion to modify scheduling order by allowing
21 summary judgment motion after pretrial motion cut-off date).

22 To establish “good cause,” parties seeking modification of a scheduling order must
23 generally show that, even with the exercise of due diligence, they cannot meet the order’s timetable.
24 *Johnson, supra*, 975 F.2d at 609; see e.g., *Hood v. Hartford Life & Acc. Ins. Co.*, 567 F.Supp.2d 1221,
25 1224 (E.D. Cal. 2008) (granting request for modification that was promptly made when it became
26 apparent that compliance with the scheduling order was not possible). In determining “good cause,”
27 courts also consider the importance of the requested modification, the potential prejudice in allowing
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1 the modification, and, conversely, whether denial of the requested modification would result in
2 prejudice. *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003) (involving
3 amendment of pleadings).

4 Here, good cause exists for a modification of the Court's scheduling order given the
5 Parties' inability to complete necessary discovery within the Scheduling Order's timetable, and the
6 lack of Class Certification Motion deadlines and post-Certification discovery deadlines.

7 **THEREFORE, upon good cause shown**, the Parties stipulate to continue and/or
8 modify the Scheduling Order as follows:

- 9 • Last Day to Make Expert Witness Disclosures: **2/21/22**
- 10 • Last Day to Make Rebuttal Expert Disclosures: **3/21/22**
- 11 • Last Day to Complete Discovery Related to Class Certification (except expert
12 discovery): **3/11/22**
- 13 • Last Day to Complete Expert Discovery Related to Class Certification: **4/20/22**
- 14 • Last Day to Move for/against Class Certification: **4/5/22**
- 15 • Opposition to Class Certification Motion(s) by: **4/19/22**
- 16 • Repl(ies) to Class Certification Motion(s) by: **4/26/22**
- 17 • Hearing on Class Certification Motion(s) on: **5/3/22**
- 18 • [Assuming Certification Motion is decided on 5/3/22] Last Day to Complete
19 Remaining Discovery or file any Motion re Discovery: **8/19/22**
- 20 • Dispositive Motions and/or Motion to De-Certify Class filed by: **10/4/22**
- 21 • Dispositive Motion or Motion to De-Certify Class hearing: **11/15/22**
- 22 • Final Pre-Trial Conference: **1/27/23**
- 23 • Jury Trial: **3/13/23**

24 IT IS SO STIPULATED.
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1 Dated: November 4, 2021

JAMES HAWKINS APLC

2
3 /s/ Christina Lucio (as authorized on 11/4/21)

4 JAMES R. HAWKINS
5 CHRISTINA M. LUCIO
6 Attorney for Plaintiff
7 KEVIN HARRIS

8 Dated: November 4, 2021

LITTLER MENDELSON P.C.

9
10 /s/ Nathaniel H. Jenkins

11 TANJA L. DARROW
12 SIMERDIP KHANGURA
13 NATHANIEL H. JENKINS
14 Attorneys for Defendant
15 MCKESSON MEDICAL-SURGICAL INC.
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ORDER

Upon good cause shown, the Court Orders the Scheduling Order to be modified as follows:

- Last Day to Make Expert Witness Disclosures: **2/21/22**
- Last Day to Make Rebuttal Expert Disclosures: **3/21/22**
- Last Day to Complete Discovery Related to Class Certification (except expert discovery): **3/11/22**
- Last Day to Complete Expert Discovery Related to Class Certification: **4/20/22**
- Last Day to Move for/against Class Certification: **4/5/22**
- Opposition to Class Certification Motion(s) by: **4/19/22**
- Repl(ies) to Class Certification Motion(s) by: **4/26/22**
- Hearing on Class Certification Motion(s) on: **5/3/22**
- [Assuming Certification Motion is decided on 5/3/22] Last Day to Complete Remaining Discovery or file any Motion re Discovery: **8/19/22**
- Dispositive Motions and/or Motion to De-Certify Class filed by: **10/4/22**
- Dispositive Motion or Motion to De-Certify Class hearing: **11/15/22 at 1:30 PM**
- Final Pre-Trial Conference: **1/27/23 at 10:00 AM**
- Jury Trial: **3/13/23 at 9:00 AM**

IT IS SO ORDERED.

Dated: November 4, 2021

/s/ John A. Mendez

THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE